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In re Application of :
Scott A. Waldman et al :
Application No. 10/656,895 : DECISION ON PETITION
Filed: September 5, 2003 : UNDER 37 CFR 1.181
Attorney Docket No. 100051.10731 :
:

This is in response to the petition under 37 CFR 1.47(a) received August 23, 2007, which, for the reasons stated below, is being treated as a petition under 37 CFR 1.181 to accept the supplemental oath or declaration submitted with the petition under 37 CFR 1.67(a) (2).

The petition is granted.

MPEP § 603, provides that, "[w]hen an inventor who executed the original declaration is refusing or cannot be found to execute a required supplemental declaration, it is possible that the requirement may be suspended or waived in accordance with 37 CFR 1.183." Therefore, the submission of a petition under 37 CFR 1.47(a) is not the appropriate avenue of relief in this instance. Further, it is unnecessary here under 37 CFR 1.183 to waive the provisions of 37 CFR 1.67(a) for the reasons stated below.

The Notice of Allowability mailed August 21, 2007 required the submission of a substitute oath or declaration, stating that the originally submitted oath is defective in that there are non-initialed and/or non-dated alterations and that it was not executed in accordance with either 37 CFR 1.66 or 1.68 by Joshua M. Pearlman.

A review of the record indicates that a Combined Declaration and Power of Attorney from prior Application No. 09/649,697 was executed by all the inventors, including Joshua M. Pearlman. The declaration also included a statement under 37 CFR 1.66 and 1.68 by all of the inventors and a non-initialed, non-dated alteration to the citizenship of inventor Parkinson.

It is noted that prior Application No. 09/649,697 did issue with the declaration as filed in this application. Nevertheless, as there was a non-initialed, non-dated alteration to the declaration, the supplemental declaration executed by inventor Scott J. Parkinson now corrects this defect. As noted in 37 CFR 1.67(a)(2), a deficiency or inaccuracy relating to fewer than all the inventors may be corrected with a supplemental oath or declaration identifying the entire inventive entity but signed only by the inventor or applicant to whom the error or deficiency relates.

Further, it is unnecessary here under 37 CFR 1.183 to waive the requirements of 37 CFR 1.67(a) since the original declaration was executed by all of the inventors, including Joshua M. Pearlman, and otherwise complied with 37 CFR 1.66 and 1.68. Although the declaration executed by Joshua Pearlman is not dated, this is not a requirement. See MPEP 602.05. Therefore, as the supplemental declaration submitted with this petition complies with the provisions of 37 CFR 1.67(a)(2), the supplemental declaration is hereby accepted as responsive to the Notice of Allowability of August 21, 2007.

In view of the treatment of this petition as one under 37 CFR 1.181, the \$200 petition fee submitted is unnecessary and will be refunded to petitioner's credit card in due course.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218.

A Notice of Allowance and Fee(s) Due was mailed on August 21, 2007 requiring submission of the issue and publication fees. Failure to timely reply will result in the abandonment of this application.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions